SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 166.

THE UNITED STATES, APPELLANT,

vs.

DIXON N. GARLINGER.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

1 In the Court of Claims. Term 1895–1896.

DIXON N. GARLINGER
v.
THE UNITED STATES. } No. 16312.

I.—*Petition.*

On the 24th day of August, 1888, the claimant filed a preliminary petition, and on the 11th day of May, 1892, he filed his completed petition under the rules of this court.

His amended petition was filed by leave of court, January 29, 1895, and is as follows, to wit:

Amended petition, filed January 29, 1895.

To the Honorable, the Court of Claims:

Your petitioner, Dixon N. Garlinger, a citizen of the United States, residing at Washington, in the District of Columbia, respectfully represents:

That in the year 1882, he was appointed a night inspector in the customs service of the United States, at the port of Baltimore, in the State of Maryland; that he entered on the duties of said office on the 1st day of April, one thousand eight hundred and eighty-two (1882), and continued to discharge the same until the 18th day of August, one thousand eight hundred and eighty-six (1886).

Petitioner says that during the said period of his service as a night inspector, compensation therefore was fixed by law at three dollars ($3) per diem, for services actually performed; that it was also provided by laws and regulations of the Treasury Department for the government of officers of customs under the superintendence and direction of sur-
2 veyors of ports, made by the Secretary of the Treasury, that the night inspectors shall be divided into two watches as nearly equal as possible, both watches to perform duty every night; that whenever it is necessary to assign a night inspector to a vessel, or to any other all-night charge, the night inspector so assigned must remain on the vessel until relieved, and he will be excused from performing any duty the following night.

Petitioner says that whilst holding the position of night inspector or night watchman he was required thirteen hundred and fifty-two times to perform double duty—that is, the duty of both the first and second watch, but that he was not only not excused from performing any duty the following night, but peremptorily required to perform such duty.

That whilst under orders he was required to perform the duties of a night inspector in both the first and second night watch, he has only been paid for one.

That by the laws and regulations for the government of officers of the customs, as prescribed by the Secretary of the Treasury, and as construed in the principal customs ports of the United States, one watch actually performed by a night inspector or night watchman is, and is regarded and paid for as, a day's work.

That under the law and regulations made in pursuance thereof, he is entitled to be paid three dollars ($3) per day for each day's work actually

performed, and that a day's work of a night inspector or watchman is the performance of one watch.

He therefore claims that he is entitled to be paid for thirteen
3 hundred and fifty-two days' service which he has performed under orders, and for which he has not been paid, at the rate of three dollars ($3) per day, amounting to four thousand and fifty-six dollars ($4,056), for which amount he prays judgment.

Your petitioner is the sole owner of this claim, and the only person interested therein, and no assignment or transfer of the claim or of any part or interest therein has been made, nor has any part or portion thereof been paid.

DIXON N. GARLINGER.

DISTRICT OF COLUMBIA, *ss:*

Dixon L. Garlinger, being duly sworn, deposes and says: I am the claimant in this cause; I have read the amended petition, and the matters therein stated are true, to the best of my knowledge and belief.

Subscribed and sworn to before me this 29th day of January, A. D. 1895.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

DUDLEY AND MICHENER,
Attorney for Claimant.

R. R. MCMAHON,
F. P. DEWEES,
Of Counsel.

4 II.—*Traverse, filed March 5, 1895.*

And now comes the Attorney-General, on behalf of the United States, and answering the amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said amended petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

J. E. DODGE,
Assistant Attorney-General.

5 III.—*Judgment entered March 18, 1895.*

DIXON N. GARLINGER
v.
THE UNITED STATES. } 16312.

At a Court of Claims held in the city of Washington, on the 18th day of March, 1895, judgment for the claimant was ordered to be entered as follows:

The court on due consideration of the premises finds for the claimant, and orders, adjudges, and decrees that Dixon N. Garlinger do have and recover of and from the United States the sum of two thousand one hundred and eighty-four dollars ($2,184).

BY THE COURT.

6 IV.—*Motion of claimant to amend findings of fact and correct judgment.*

(Filed April 1, 1895. Allowed by the court November 25, 1895.)

Comes now the claimant, by his attorneys, and moves the court that the findings of fact as found by the court and judgment be amended as follows:

I.

Amend Finding II so that it shall read as follows:

"During the above-named period claimant was paid for 1,608 days of night service, of which 1,353 payments were for night service when he was present for duty, and 255 payments were for night service when he was absent from duty on leave or on account of absence."

(See report of Diffenbaugh, deputy collector, Record, page 67, near bottom of page.)

Our reasons for asking the foregoing amendment are that we think the court was led into an error by a misconception of the report of Collector Marine, Record, page 29, at the top of the page, where the claimant is credited with "number of nights present, 1,106; number of nights absent, 234." If we add 1,106 and 234 together, the total amount is 1,340 days, and this, taken from the 1,608 days paid for, leaves 268 days unaccounted for, for 1,608 minus 1,340 equals 268. This error of the court, for we believe it to be an error, may be accounted for by the fact that the statement of Collector Marine was for the period from May 1, 1871, to November, 1885, inclusive, as will be seen by an examination of the heading of that report, which reads as follows:

"Statement of service rendered by night inspectors of customs at the port of Baltimore, Maryland, during the period from May 1, 1871, to November 30, 1885, inclusive, as requested by Department letters of June 2 and 27, 1892."

7 (See Record, page 27, et seq.)

Now, if the court will examine the report of Diffenbaugh, the deputy collector (Record, page 67), it will be observed that he was undertaking to furnish the Secretary of the Treasury, and through that officer the Court of Claims, with the exact time of claimant's service, and he reports that the claimant "took oath of office and entered upon the discharge of the duties of a night inspector of customs on April 1, 1882, and continued in the same office until August 25, 1886, inclusive." This extends the period of the claimant's service beyond the time covered by the report of Collector Marine nearly nine months, or 268 days.

In addition to these things, we ask the court's attention to the fact that when the claimant was assigned to special service it was for both day and night service. (Record, page 12, cross interrogatories 24 and 28 inclusive.)

II.

The claimant also moves that Finding III be amended by striking out 1,106 and inserting 1,353; by striking out 234 and inserting 255, and by striking out 872 and inserting 1,098.

III.

The claimant also moves that Finding IV be amended by striking out 728 and inserting 954.

IV.

Claimant also moves that the conclusion of law be amended by striking out $2,184 and inserting $2,862.

Our reasons for the foregoing requests are:

8 First. Because there has been a miscalculation or misunderstanding of the evidence, as we have shown in the argument in support of our first motion, and which need not be repeated.

Second. In the opinion of the court, it is said: "On these 234 days the presumption is the claimant received what he was entitled to, and all that he was entitled to, viz, pay with absence from duty, and the reason that he was entitled to pay with absence from duty was that he had rendered double duty on 234 nights on the 1,106 nights in the other column." Applying this doctrine to the corrected statement of facts, we submit that the court should, upon the allowance of 1,353 nights, deduct 255 absences by reason of the fact that they were absences on leave or on account of sickness.

Therefore the claimant submits that the account stands as follows:

Amount of night service		1,353
Deduct those barred by statute	144	
Deduct absences on leave or sickness	255—	399
Balance of time entitled to		594

It is submitted that the claimant is therefore entitled to 954 days at $3 a day, or $2,862.00.

DUDLEY AND MICHENER,
Attorneys for Claimant.
F. P. DEWEES,
Of Counsel.

(Allowed November 25, 1 95, by the court.)

9 V.—*Motion of defendants for new trial.*

(Filed April 22, 1895. Overruled November 25, 1895.)

Now comes the defendant and move the court to set aside the judgment rendered in this case and grant a new trial therein, or render judgment for the defendant, for the reasons:

First. That defendant alleges that error of law was committed in the conclusion of the court that because claimant performed services in excess of those required by regulation of the Treasury Department for each day he was entitled to extra or additional compensation; and

Second. Because defendant alleges that wrong and injustice has been done the United States by said judgment in that no liability should be adjudged against the United States upon the facts found by the court.

J. E. DODGE,
Assistant Attorney-General.

(November 25, 1895, overruled by the court.)

10 VI.—*Amended findings of fact and conclusion of law. Filed November 25, 1895.*

The court, upon the evidence, finds the facts to be as follows:

I.

The claimant, a citizen of the United States, was appointed by the collector of the port of Baltimore a night inspector in the customs service at Baltimore in 1882. He took the oath of office and entered upon the discharge of the duties of night inspector of customs on April 1, 1882, and continued in office until August 25, 1886, a period of 1,608 days.

II.

During the above-named period the claimant was paid for 1,608 days, of which 1,353 payments were for night service when he was present rendering actual service, and 255 were for night service when he was absent and off duty.

III.

During the 1,353 days of night service the claimant was required to perform duty as night inspector from sunset to sunrise and until relieved by the day inspector, the length of the night service consequently varying, and sometimes extending from 5 p. m. of one day until 10 a. m. of the succeeding day. During this time the claimant was not allowed to be off duty on the succeeding night, after having been on duty two watches, except in the 255 instances set forth in Finding II, when he was off duty and received pay. That is to say, he performed the duties of both the first and second watch on 1,098 nights without additional compensation and without being allowed to be off duty on any alternate night.

IV.

The petition not having been filed until August 24, 1888, 144 days of the number last above stated are barred by the statute of limitations, leaving 954 days as the subject of the present suit.

V.

The claimant objected to his superior officer, the surveyor of the port, against his being required to perform the duties of both watches in one night without being excused from the performance of duty on the following night; and he subsequently remonstrated at various times.

11 VI.

At the time of his entering the service as night inspector he was furnished by his superior officers with a copy of the regulations promulgated by the Secretary of the Treasury for his governance and defining his duties. It was customary for the surveyor of the port to furnish such regulations to inspectors and others at the time of their entering the customs service. The regulations hereinafter quoted were among those so given to the claimant.

VII.

The Laws and Regulations for the Government of Officers of Customs under the Superintendence and Direction of Surveyor of Ports, 1877,

was issued by the Secretary of the Treasury to the custom-house authorities of all ports, including the port of Baltimore, and were in operation in all of the principal ports, except Baltimore, in which the practice of the ports at the time of the claimant's appointment was not, and had not been, in accordance with the requirement of the regulations making two night watches and relieving the first watch at midnight. There the surveyor of the port had always required the night inspectors to serve from sunset to sunrise.

VIII.

The following are among the regulations given to the claimant when he entered the service, above referred to:

"ART. 420. The night watchmen shall be divided into two watches, as nearly equal as possible, both watches to perform duty every night. The surveyor of the port will, however, make such changes in the division of the watches as he may deem expedient, and will appoint the hours of duty for the different watches.

"Whenever it is necessary to assign a night watchman to a vessel, or to any other 'all-night' charge, the night watchman so assigned must remain on the vessel, or on his charge, until relieved, and he will be excused from performing any duty the following night.

"Night watchmen must not quit their charge on being relieved without first making their presence personally known to the officer relieving them. Night watchmen, when on duty, must wear their official badge."

IX.

In the Laws and Regulations for the Government of Customs Inspectors, Weighers, Gaugers, and Measurers, etc., 1883, on pages 126, 127, there is the following:

"ART. 407. The lieutenants, if there be any, shall be on duty at such time and place as may be provided by the surveyor, to supervise the signing of the roll by the night inspectors as they report for duty; to assign to duty those who are present to the respective stations and charges; to make out a list of charges for the night inspectors of each watch; to note and report to the captain those night inspectors who report late, or who are absent from duty, and to obey such orders and perform such duties as may be required of them by the captain of the night inspectors. The lieutenant in charge shall remain on duty until sunrise, or such hour as shall be prescribed by the surveyor, and should any vessel arrive during the night, or any call be made for a night inspector, he will make the necessary assignment of a night inspector thereto.

"ART. 408. The report of each night (Cat. No. 916), showing the station or charge to which each night inspector reporting for duty was assigned, and also showing those who were late, absent, sick, etc., having been first signed by the captain and lieutenant on duty, shall be delivered to the surveyor.

12 "ART. 409. The night inspectors will be assigned to duty by the captain of the night inspectors in such manner and in accordance with such regulations as may be directed and prescribed by the surveyor of the port, and as, in his judgment, may be best for the prevention and detection of frauds on the revenue.

"Whenever it is necessary to assign a night inspector to a vessel, or to any other 'all-night' charge, the night inspector so assigned must remain on the vessel, or on his charge, until relieved, and he will be excused from performing any duty the following night.

"Night inspectors must not quit their charge on being relieved without first making their presence personally known to the officer relieving them.

"Night inspectors, when on duty, must wear their official uniform and badge, except when, by authority of the surveyor, the wearing of the uniform and badge, or either, is omitted for the purpose of more effectually preventing or detecting fraud."

Catalogue No. 916, referred to in article 408, is as follows:

CATALOGUE No. 916.

Night inspector's report for night ——, 188–. Reporting officer —— ——, captain of the night inspectors.

Names. From — p. m. to — p. m.	Where stationed.	Names. From — p. m. to — p. m.	Where stationed.

—— ——, *Captain.*

On page 166 of Laws and Regulations, etc., 1877, there is the following:

Night watchman's report for —— night, ——, 18—. Reporting officer, —— ——, captain of the watch.

Names.		Where stationed.		Officers' assignments.	
— o'clock — m p. m.	11½ o'clock p. m.	Vessel.	Wharf.	— o'clock — m p. m.	11½ o'clock p. m.

—— ——, *Captain.*
—— ——, *Lieutenant.*

To the SURVEYOR.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover $2,862.00

13 VII.—*Opinion of the court of March 18, 1895.*

NOTT, J., delivered the opinion of the court:

The law of master and servant has a certain elasticity not to be found in the law which regulates other contracts. The servant can not charge his employer if he works overhours within the sphere of his proper employment, and the master can not charge the servant with lost time where he falls short in his hours of labor. The remedy of the one is to discharge and of the other to stop work. So long as they allow the relation of master and servant to continue, so long trivial deviation from the right line of the contract will not receive the aid nor countenance of

the law. This element of elasticity was doubtless introduced into the law of master and servant for the peace and harmony of society. It is a wise rule, which enables both parties in a continuing relationship to know at any time just where they stand. If it were not so, the one might spring upon the other an account for short hours at the end of the year, and the other might present a bill for numberless unknown items of overtime, and endless petty conflicts would take the place of peace and harmony.

The law of master and servant goes still further than this. It requires (and this notwithstanding an express agreement or a statutory regulation) the servant to render service overhours in cases of emergency without additional compensation, and it even makes his refusal justifiable cause for discharge. That is to say, where a man agrees to work only ten hours a day and the master, in a proper case of emergency, requires him to work twelve, and he refuses, the master can treat the refusal as a violation of the contract and put an end to it.

But these cases of allowed deviation from the contract are nevertheless guarded by careful limitations. The additional service of the servant must be within the sphere of his ordinary employment. If required to do something entirely different from that which he was hired to do, he has a right of action. Thus, it is said, a clerk can not be required to carry mortar; a ladies' maid can not be required to milk cows; a saddler can not be required to cook; a farm laborer can not be required to serve as a household servant. So, if the servant renders additional service in the line of his own proper employment, but against his objection, and at the special request of the master, he can recover for it. So, too, his additional service, though not a good cause of action per se, will support a promise to pay, and he can recover on it.

These cases illustrate the care of the common law to guard the peace and quiet of the domestic relations, and to exclude the vexation of litigation from the ordinary daily affairs of life. But these variations from the letter of the contract all relate to trivial things. The law of master and servant does not compel a man who has agreed to render one kind of service to render another, nor one who has agreed to do one thing to do two. The departures from the contract which are countenanced must be trivial, ordinary, and reasonable, or rendered necessary by a miniature vis major termed "emergency."

14 If we regard the case before us as one of master and servant and the regulations of the Treasury Department as an express contract between the parties, and the day specified in this express contract as a single night watch running from sunset to midnight or from midnight to sunrise, it is manifest that the deviation of requiring the servant to serve from sunset to sunrise, of requiring one man to do the work of two men within the contemplation of the contract, is too gross a deviation to come within the exceptions allowed by the common law. The regulations provide that two watches shall share the duty of the night, and that the second shall be on duty from midnight to sunrise and until relieved. The relief often came late. But in this the regulations follow the common law, and for such additional service a night inspector certainly can not recover. But that is a very different thing from requiring him to serve just twice as long as it was expressly agreed he should serve.

If we regard the regulations as having the force of law and being in effect a statute regulating the particular employment, the case in the books nearest to this one is probably that of Bachelder v. Bickford (62 Maine R., 526), which we quote in extenso:

"WALTON, J.:

"When a contract to work in a gristmill at eight shillings per day, to be paid weekly, is silent as to the length of time that shall constitute a day's work, the rule established by the statutes of this State, that 'in all contracts for labor ten hours of actual labor shall be a legal day's work, unless the contract stipulates for a longer time,' is applicable (R. S., c. 82, sec. 36). And if the laborer works nights, after his legal day's work is done, at the request of his employer and for his benefit, the law implies a promise on his part to pay for such labor. Acceptance of pay for the day labor will be no bar to a recovery for the night labor. It is true that the above rule is not applicable to 'monthly labor,' nor to 'agricultural employments.' But in our judgment work in a gristmill, at eight shillings per day, to be paid weekly, is not monthly labor nor agricultural employment.

"Such, in effect, was the ruling in this case. We think the ruling was correct."

It seems to the court that regulations of the Treasury issued under authority of law for the regulation of the service of night inspectors in all the ports of entry in the United States and actually in force and operation in all of the principal ports, except the port of Baltimore, have the force of law and take the place of the statute mentioned in the above opinion; and it also seems to the court that requiring an inspector of the first watch to render service through the second watch is analogous to the day and night service in the Maine case.

While we have referred to the law of master and servant as furnishing analogies by which to determine in what cases additional compensation can and can not be recovered for additional service, it must be remembered that this is the case of a public official serving for compensation attached to an office by law. The compensation of a public officer is not necessarily regulated or limited by the law of master and servant. His salary or pay is generally fixed and certain. It can not be diminished by official authority, as in Sleigh's Case (9 C. Cls. R., 369), where payment was withheld on account of sickness, or refused him because Congress had failed to appropriate the full amount, as in Graham's Case (1 id., 380). Where a public compensation is a salary fixed by statute it ordinarily covers all the official service of the term of office; but in the present case the law designates no term of office and provides no salary. A daily pay implies a daily service; and when the regulations of a Department, having the force of law, prescribe what that daily service shall be, it becomes as complete a thing with reference to the daily pay as a year's service is with reference to an annual salary. The night service of inspectors of customs is a peculiar thing and a proper subject for Departmental regulation. When the authorities of the port of Baltimore required the night inspectors to go on duty sixty night watches in a month, while the regulations said they should be on duty only thirty night watches in a month, it is manifest that the inspectors should be paid for sixty of these units of service, and that when the Government paid for only thirty it was paying for one man's service where the regulations in

effect provided that it should pay for two. If the Government had employed two inspectors to do the work of two, and had given to the inspectors on duty through two night watches, the alternate nights of rest assured to them by the regulations, the result in money would have been the same as that now reached by the decision of this case.

16 The counsel for the defendants has likened this case to Harrison's (26 C. Cls. R., 259) and has argued that the credit to which the claimant was entitled was on the other side of the account; that he was not entitled to more money, but to more rest, and that when he did not get the rest which was promised him on each alternate night of all-night service, his only remedy was to resign. That might be true if the claimant had been employed by the month or year. But it is plain that during his period of employment, from the 1st of April, 1882, to the 25th of August, 1886, he rendered service through 2,196 night watches, while the regulations at the same time required him to render it only through 1,098. The additional 1,098 were consequently additional service, for which he was not paid, and for which, in the opinion of the court, he is entitled to recover.

There are two other points in the case which should be noted.

The time when the claimant's service as night inspector began was April 1, 1882, but this action was not brought until August 24, 1888. Consequently so much of the claim as accrued prior to August 24, 1882, is barred by the statute of limitations. The defendants have filed no plea setting up the statute, nor moved to strike out this much of the demand; nor was the attention of the court called to this defense pro tanto on the trial. But under the decision of the Supreme Court in Finn v. The United States (123 U. S. R., 227) this is a defense which the court is bound to notice. And in the absence of proof or explanation to the contrary, the court must assume that all of the nights between the 1st of April and 24th of August, 1882, were nights of double duty, and the court, therefore, must exclude from the claimant's recovery pay for 144 days.

The second point relates to a question of evidence.

The claimant has testified that he was on all-night duty, except when absent from sickness or other causes, for 1,352 nights. This is in a measure corroborated by the records of the Department, which show that he was recognized as on duty 1,353 days. The claimant does not specify the particular nights on which he did double duty; he kept no record, and obtained his figures by going to the record kept by the clerk of night inspectors and getting from it the number of nights for which he was credited with service. But it appears by the testimony of the surveyor of the port that when the number of vessels coming into port fell off and the whole force was not required for duty, so many of the inspectors as were not needed would be excused; and it appears by the report of the deputy collector of the port to the Secretary of the Treasury (which we understand to be a statement for services paid for) that the number of nights when the claimant was present and doing duty, during his entire period of service, was 1,608, and the number he was absent 255. On these 255 nights, therefore, the presumption is the claimant received what he was entitled to, and all that he was entitled to, viz, pay with absence from duty; and the reason why he was entitled to pay with absence from duty was because he had rendered double duty on 255

nights of the 1,608 nights in the other column. For these 255 nights of double duty the claimant, therefore, is entitled to nothing; he received full compensation for them when he received pay for 255 other nights during which he rendered no service. Accordingly, 255 must be substracted from the 1,353 of double duty, leaving 1,098; and from this number, 1,098, there must be substracted 144, barred by the statute of limitations, leaving 954 for which he is entitled to recover.

The judgment of the court is that the claimant recover $2,862.

17 VIII.—*Opinion on the motion of defendants for a new trial and order overruling same, filed November 25, 1895.*

NOTT, J., delivered the opinion of the court:

This is in effect a motion on the part of the defendants, founded on the facts found, to set aside the judgment heretofore rendered in favor of the claimant and to enter judgment in favor of the defendants.

The grounds upon which the motion is placed are that the Revised Statutes (sec. 1764, 1765) and the Act 20th June, 1874 (18 Stat. L., p. 109, sec. 4), prohibit additional pay for extra services; that this court held in Harrison's Case (26 C. Cls. R., 259) that an employee in the Government Printing Office who does not receive a leave of absence is not entitled to recover double pay when the leave is refused; that the Supreme Court held in Martin's Case (94 U. S. R., 400) that a laborer who was compelled to work more than eight hours a day, contrary to the eight-hour law, could not recover for the additional time; and that this court held in Post's Case (27 C. Cls. R., 244) that the word day in a statute referring to compensation can not be made to mean anything except a calendar day.

Between this case and those relied upon by the Attorney-General it is believed by the court well-grounded distinctions exist which may thus be stated:

The distinction between this case and Post's is that here the regulations of the Treasury Department, made under the statute and having the force of law, define the statutory day as something different from the calendar day, and provide expressly that two statutory days' service may be rendered in one calendar day. They go further and provide that a night inspector may receive pay for a calendar day during which he renders no service whatever. It is these provisions of the regulations which form the groundwork of the court's opinion and distinguish this case from all other cases; that is to say, from all cases seeking additional or extra pay. Whether these regulations are authorized by law may well be doubted. But having been in force for a number of years, and in operation in every port of the United States, except at the port of Baltimore, and having received the tacit, if not express, approval of Congress, this court does not feel at liberty to disregard them and hold that they are not authorized by law.

The distinction between this case and Harrison's is that there the claimant was not entitled as a matter of legal right to a vacation with pay, but only to a leave of absence for a restricted period when, in the discretion of the Public Printer, such leave could be granted without detriment to the public business; and the Public Printer had not the shadow of legal

authority for making a gift of money where the state of the public business did not admit of his giving a workman a leave of absence.

18 Here the regulations expressly provided that the night inspectors should receive, in certain contingencies, leave of absence with pay, and left no discretion in their superior officers to order otherwise. In the one case the legal right, which must be the foundation of a suit at law, did not exist; in the other it does.

The distinction between this case and Martin's is that there the claimant was seeking to recover additional compensation for extra time where such additional compensation was prohibited by law. Here the suit is not to recover for extra time, but for a day's service rendered which has never been paid for. The claimant has done two days' work and been paid for only one. The unpaid-for service was not additional or extra, but entire and complete, a thing by itself. The compensation which the court awarded was not compensation prohibited by law, but, in the opinion of the court, the exact compensation prescribed by law. Whether the regulations have the force of law, whether they make the law of the case and fix the claimant's legal right, as was before said, may well be questioned; but this court, for the reasons before given, does not feel at liberty to disregard them.

In Martin's Case the Supreme Court, in the construction of the eight-hour law, followed the general principle of the law of master and servant, that the servant can not recover additional compensation for overhours. This court, in the interpretation of the law in the present case, has followed the other principle, that the master can not require the servant to render a service which is beyond the sphere of his proper employment, nor to render both day and night service where he was hired to render only one of them. Where a night watch of these inspectors ran beyond the prescribed limit—where an inspector instead of being relieved at midnight was compelled to serve until one or two or three o'clock in the morning—it is a case of overhours, or extra time, for which he can not recover. But where he rendered two distinct, entire statutory days' services, though in one calendar day of twenty-four hours, it was service beyond his proper employment, and he is as much entitled to compensation for the one statutory day as for the other. When each of two things as legally defined is complete and distinct, it can not properly be said that the one is an additional part of the other. If a farmer had agreed to deliver at a military post one cord of wood a day for one year, and had been required on some days to deliver two cords instead of one, and in the course of the year had delivered five hundred cords instead of three hundred and sixty-five, he would have been paid without a doubt for the number of cords delivered and not for the number of days in the year. Here the regulations, which may be considered as taking the place of a contract, required the night inspectors to do duty for one night watch a day on every day in the year. On many days they were required to perform the duty through two night watches, and in the course of a year to perform to the extent of, say, five hundred night watches instead of three hundred and sixty-five. If the regulations have the force of law, it seems to the court that the case of the inspectors is as clear as the case of the farmer.

The order of the court is that the motion of the defendants be overruled.

BY THE COURT.

19 IX.—*Former judgment set aside and re-formed judgment entered, November 25, 1896.*

DIXON N. GARLINGER
vs.
THE UNITED STATES. } 16312.

At a Court of Claims held in the city of Washington on the 25th day of November, A. D. 1895, it was ordered that the judgment entered herein on the 18th day of March, 1895, be vacated and set aside, and that judgment in lieu thereof be entered as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said Dixon N. Garlinger do have and recover of and from the United States the sum of two thousand eight hundred and sixty-two dollars ($2,862).

BY THE COURT.

20 X.—*Application of defendants for and allowance of appeal.*

DIXON N. GARLINGER
vs.
THE UNITED STATES. } 16312.

From the judgment rendered in the above-entitled cause, on the 25th day of November, 1895, in favor of the claimant, the defendants, by their Attorney-General, on the 9th day of January, 1896, make application for and give notice of an appeal to the Supreme Court of the United States.

J. E. DODGE,
Asst. Atty. General.

Filed January 9, 1896, and allowed in open court January 13, 1896.

WILLIAM A. RICHARDSON,
Chief Justice.

21 In the Court of Claims.

DIXON N. GARLINGER
vs.
THE UNITED STATES. } No. 16312.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the judgment entered March 18, 1895, of the claimant's motion to correct findings and allowance thereof, of the defendants' motion for a new trial, and the opinion and order overruling said motion, of the amended findings of fact and conclusion of law, of the corrected opinion of the court, of the re-formed judgment of the court, of the application of the defendants for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 17 day of January, A. D. 1896.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

22 In the Court of Claims. Term 1895–1896.

DIXON N. GARLINGER
vs.
UNITED STATES. } No. 16312.

At a Court of Claims held in the city of Washington on the sixth day of April, 1896, the court filed an order overruling defendant's motion for new trial and the request for finding by said defendants and filing an additional finding numbered X.

The annexed copy of said order, including said additional finding of fact, is hereby certified to the Supreme Court of the United States, to form part of the record on appeal in said cause, which was heretofore, to wit, on the 17th day of January, 1896, certified to said Supreme Court.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 10th day of April, A. D. 1896.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

23 Court of Claims.

DIXON N. GARLINGER
v.
THE UNITED STATES. } No. 16312.

ORDER.

It is ordered that the defendant's motion for a new trial, filed March 19, 1896, be overruled.

It is further ordered that the following additional finding of fact be filed as one of the findings of fact in this case:

X.

Of the 954 days set forth in Finding IV 422 days occurred prior to July 1st, 1884, and 532 days occurred after that date. It does not appear that the hours of service of night inspectors or length of the night watches were changed at any port of the United States subsequent to the promulgation of the "General Regulations under Customs and Navigation Laws of the United States," 1884, but, on the contrary, continued, as set forth in Finding VII.

The defendant's request that "the regulations referred to and described in the VII, VIII, and IX findings remained in force until July 1st, 1884, and on that day were repealed, and other regulations established in their stead, which contained no provision fixing the time of service and tours of duty of night inspectors" is refused. The court does not regard the regulations of an Executive Department, made in pursuance of a statute, as a matter of evidence.

BY THE COURT.

Filed April 6, 1896.

A true copy. Test this 10th day of April, 1896.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Ct. of Claims.

(Indorsement on cover:) Case No. 16273. Term No. 166. The United States, appellant, *vs.* Dixon N. Garlinger. Court of Claims. Filed April 30, 1896.